

1988

In Re: Ray Stoddard : Brief of Respondent

Utah Supreme Court

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John R. Bucher; Attorney for Appellant.

Toni Marie Sutliff; Office of Bar Counsel; Attorney for Respondent.

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BRIEF

880130

IN THE SUPREME COURT OF THE STATE OF UTAH

In Re:	:	Brief of Respondent
	:	
RAY STODDARD	:	F-224
	:	No. 880130
Appellant.	:	

APPEAL FROM FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION OF DISCIPLINE BY THE
BOARD OF COMMISSIONERS OF THE UTAH STATE BAR

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FILED
DEC 1 1989

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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	:	
RAY STODDARD	:	F-224
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ISSUES PRESENTED FOR REVIEW

1. Is the Amended Record complete so that the Utah Supreme Court can proceed to review a recommendation that Mr. Stoddard be suspended for six months?
2. Should the Utah Supreme Court affirm the recommendation that Mr. Stoddard be suspended for six months for violating the terms of his probation, when Mr. Stoddard admits that he violated his probation, and when the findings and conclusions of the Hearing Panel are amply supported in the Amended Record?
3. Should Mr. Stoddard be allowed to attack the validity of the prior final Order of Discipline entered against him by the Utah Supreme Court, in the context of this appeal?

STATEMENT OF THE CASE

On or about April 18, 1988, the Utah Supreme Court entered an Order of Discipline suspending Mr. Stoddard from the practice of law for six months, and staying that suspension during a nine-month period of probation during which time Mr. Stoddard was required to pay the Utah State Bar \$150.00 for the costs of prosecution, pay restitution of \$185.00 to his client, Patricia Knight, and comply with certain monitoring requirements. (R. 39-42).

On or about December 15, 1988, Mr. Stoddard was served with an Order to Show Cause why his probation should not be revoked and further discipline imposed for his failure to comply with the probationary terms of the Order of Discipline. (R. 46-49).

On or about January 19, 1989, after a hearing at which Mr. Stoddard was present, the Disciplinary Hearing Panel of the Disciplinary Hearing Panel Committee of the Utah State Bar (the "Hearing Panel") entered its Order on Order to Show Cause and recommended that Mr. Stoddard's probation be revoked, that he be suspended from the practice of law for six months, and that he be ordered to pay \$150.00 to the Utah State Bar and \$185.00 to Patricia Knight. (R. 52-55).

On or about February 7, 1989, the Board of Bar Commissioners of the Utah State Bar (the "Bar Commission") adopted the recommendation of the Hearing Panel in its entirety. (R. 56-57).

On or about February 22, 1989, Mr. Stoddard filed a timely Objection to Order to Show Cause (sic) and Motion for Reconsideration. (R. 61-62). On or about February 23, 1989, Mr. Stoddard filed an Amended Objection to Order on Order to Show Cause and Motion for Reconsideration, on the grounds that Mr. Stoddard had attempted restitution to Ms. Knight and that Mr. Stoddard had unusual difficulty conforming to the probation requirements. (R. 63-64).

On or about April 25, 1989, after a hearing at which Mr. Stoddard was present and represented by counsel, a Review Panel of the Bar Commission (the "Review Panel") recommended that the Hearing Panel's Order on Order to Show Cause be amended to reflect that Mr. Stoddard had attempted to make restitution to Ms. Knight and that he had made restitution to Ms. Knight and to the Utah State Bar on April 24, 1989, but recommended that Mr. Stoddard should nonetheless be suspended for six months. (R. 65-67).

On or about May 9, 1989, the Bar Commission accepted the Review Panel's recommendation as outlined above. (R. 68-69).

On or about May 16, 1989, Stephen F. Hutchinson, as Executive Director of the Utah State Bar, transmitted the Record to the Utah Supreme Court. (R. 74).

On or about May 22, 1989, Mr. Stoddard filed an Objection to the Recommendation of the Review Panel (the "Second Objection") on the grounds that Mr. Stoddard had attempted restitution to Ms. Knight. (Appendix I at p. 1).

On or about June 8, 1989, Mr. Stoddard filed a timely Notice of Appeal of the Recommendation of Discipline to the Utah Supreme Court. (R. 75-76).

On or about June 28, 1989, Stephen F. Hutchinson, as Executive Director of the Utah State Bar, transmitted an Amended Record (the "Amended Record") to the Utah Supreme Court.

On or about June 27, 1989, Mr. Stoddard filed a Motion to Remand for Augmentation of Record on Appeal, which was granted by Justice Howe on or about June 28, 1989. (Appendix I at pp. 2-3). Pursuant to this Order, Geoff Butler, Clerk of the Utah Supreme Court, returned the Amended Record to Stephen F. Hutchinson. (Appendix I at p. 4).

On or about August 2, 1989, the Office of Bar Counsel filed an Objection to Motion to Remand for Augmentation of Record on Appeal. (Appendix I at pp. 5-17).

On or about August 14, 1989, the Utah Supreme Court recalled Justice Howe's June 28, 1989 Order. (Appendix I at p. 18). Because of clerical oversight, however, Stephen Hutchinson failed to retransmit the Amended Record. The Amended Record dated June 28, 1989, is submitted with this Brief; all references in this Brief are to the Amended Record.

STATEMENT OF FACTS

The matters which led to the Order of Discipline entered against Mr. Stoddard involve complaints made to the Office of Bar Counsel by three complainants. Their complaints are summarized here.

Patricia Knight paid Mr. Stoddard \$185.00 to file a bankruptcy petition for her, supplying Mr. Stoddard with all necessary information in writing. Ms. Knight believed she had done everything required of her to begin the bankruptcy process. Mr. Stoddard filed the bankruptcy petition on May 20, 1985; a first meeting of creditors was scheduled for June 24, 1985. During the interim, Mr. Stoddard went on vacation, but mailed Ms. Knight a letter requesting that she appear at his office to sign the necessary Statement of Affairs. The letter was, however, returned undeliverable, as Mr. Stoddard, who was without the services of a secretary, typed an incorrect address on the envelope. Just prior to the meeting of creditors, Ms. Knight contacted Ms. Stoddard's office for a status report, and was told by an office-sharing associate that she had not signed the Statement of Affairs and that it was now too late to do so. On June 24, 1985, Mr. Stoddard and Ms. Knight appeared in the bankruptcy court, when her petition for bankruptcy was dismissed for failure to file the Statement of Affairs. (R. 30-31).

Boyd Harper and his father, George Harper, paid Mr. Stoddard approximately \$1,020.00 to represent Boyd Harper in a criminal matter and to secure a divorce from his wife. Boyd Harper agreed to delay the filing of the divorce complaint for tactical reasons until after the criminal trial. Mr. Harper was convicted of the criminal charges and committed to the Utah State Prison. Mr. Stoddard agreed to file an appeal brief and agreed to defer his \$500.00 fee until Boyd Harper was released from prison. Mr. Stoddard submitted an Affidavit of Impecuniosity to cover the costs of the transcript. Judge Timothy Hansen requested legal authority for the county paying the costs of the transcript when the defendant has private counsel, which Mr. Stoddard provided two months later. Mr. Stoddard and Boyd and George Harper agreed that the Harpers would pay to have the appeal brief typed after seeing the finished product. Mr. Stoddard never had the brief typed and the Utah Supreme Court dismissed the appeal for lack of prosecution. Mr. Stoddard never filed a divorce complaint on behalf of Boyd Harper. (R. 32-33).

In June 1983, Mary Oliver paid Mr. Stoddard \$40.00 toward a \$100.00 payment to initiate a divorce action. In October 1985, a friend of Ms. Oliver paid Mr. Stoddard the \$52.00 filing fee to enable him to file the complaint. In September 1985, Ms. Oliver had told Mr. Stoddard that she was moving to California. Mr. Stoddard did not file a divorce complaint. In January 1986, Ms. Oliver called to

inform Mr. Stoddard that she wanted to remarry and to request that he expedite the divorce. Mr. Stoddard told Ms. Oliver that the matter would be completed in two weeks. Two weeks later a California attorney contacted Mr. Stoddard to inquire as to the status of the divorce; Mr. Stoddard told the attorney that the complaint would be filed in two weeks. Mr. Stoddard filed the complaint on March 7, 1986, and the divorce was granted on March 10, 1986. Mr. Stoddard failed to notify Ms. Oliver that the divorce was granted or to mail her a copy of the decree. (R.33-34).

Based upon these facts and the recommendation of the Hearing Panel, this Court entered its final Order of Discipline on April 18, 1988. (R. 34-42). The Order of Discipline contained certain requirements which Mr. Stoddard had to fulfill in order to complete his probation:

1) restitution to the Utah State Bar of \$150.00 for the costs of the proceeding; 2) restitution to Ms. Knight of \$185.00 by July 1, 1988; 3) filing monthly written case status reports with his monitoring attorney and with the Office of Bar Counsel; 4) monthly conferences with his monitoring attorney; and 5) no unprofessional or unethical conduct during the probationary period. (R. 40-41).

Apparently, sometime during July 1988, Mr. Stoddard wrote a check to the Utah State Bar in the amount of \$190.00 to pay the restitution to Ms. Knight ordered by the Utah Supreme Court. When the check was deposited by the Utah

State Bar, it was returned for insufficient funds. Mr. Stoddard explained to the Utah State Bar that his checking account had been garnished and that the account therefore had less funds than he expected. (Tr. at pp. 4-6).

Mr. Stoddard also failed to file the monthly status reports ordered by the Utah Supreme Court, which he admits. (Tr. at pp. 3,4,6). Finally, the Office of Bar Counsel did receive a complaint against Mr. Stoddard during the probationary period, which fact Mr. Stoddard tried to hide from the Hearing Panel. (Tr. at p. 13).

Pursuant to Mr. Stoddard's failure to comply with the probationary requirements of this Court's final Order of Discipline, the Office of Bar Counsel brought an Order to Show Cause proceeding, the result of which was that the Hearing Panel and the Bar Commission recommended that Mr. Stoddard serve the six-month suspension previously stayed by this Court. Mr. Stoddard is now appealing that recommendation.

SUMMARY OF ARGUMENT

The Amended Record, as filed on June 28, 1989, contains all records and documents required for this Court to review and approve the recommendation that Mr. Stoddard be suspended for six months. In addition, although not required by the Rules of the Utah Supreme Court or the Procedures of Discipline of the Utah State Bar, the Office of Bar Counsel will stipulate to supplement the Amended Record with other information requested by Mr. Stoddard.

Mr. Stoddard, cannot, however, base his entire appeal on a supposed deficiency in the Record, especially when he did not take advantage of opportunities to supplement the Record.

The recommendation that Mr. Stoddard be suspended for six months flows naturally from the findings and conclusion that Mr. Stoddard violated the terms of his probation as entered by this Court. These findings and conclusion are amply supported in the Amended Record; in fact, Mr. Stoddard admits that he did not comply with his probation requirements.

Mr. Stoddard cannot attack the validity of this Court's prior final Order of Discipline in the context of this appeal. If he is concerned about that Order, his options are to attack it directly or through an independent action in equity to have the Order set aside.

ARGUMENT

I

THIS COURT HAS BEFORE IT ALL DOCUMENTS AND EVIDENCE, AND OTHER INFORMATION, UPON WHICH THE RECOMMENDATION OF DISCIPLINE IS BASED.

A. The Amended Record Is Complete.

Pursuant to Rule 15 of the Rules of the Utah Supreme Court and Rule XIV(a)(1) of the Procedures of Discipline of the Utah State Bar, a copy of which is attached in Appendix II, the Record in an appeal of a recommendation of discipline consists of the complaint, pleadings, motions, notices, evidence and the transcript of the proceedings

before the Hearing Panel. The purpose of filing a Record is to give this Court the opportunity to review all documents and evidence upon which the Bar Commission's recommendation is based. In the event either the attorney-appellant or the Office of Bar Counsel feels that other documentation or information is necessary for a complete review by this Court, the Rules of the Utah Supreme Court provide a mechanism for supplementing the Record. See Rule 15(b) of the Rules of the Utah Supreme Court.

The Amended Record as filed by the Executive Director of the Utah State Bar on June 28, 1989, contains all of the necessary pleadings and papers required by the Rules and upon which the recommendation of discipline is based.

It is true that certain documents described in Mr. Stoddard's Appellant's Brief were not included in the Record as transmitted on May 16, 1988. They are, however, a part of the Amended Record transmitted on June 28, 1989. See the Recommendation of the Board of Bar Commissioners dated May 9, 1989 (R. 68-69), the Recommendation of the Review Panel dated April 25, 1989 (R. 65-67), and Appellant's Notice of Appeal (R. 75-76).¹ This Amended Record, due to a clerical oversight in the Office of the Executive Director of the Utah State Bar, was not actually in the Court's possession at the time Mr. Stoddard filed his Appellant's Brief.

¹ *The first two of these documents comprise the Order disposing of Mr. Stoddard's Amended Objection to Order on Order to Show Cause, which Mr. Stoddard complains is not included in the Record.*

Notwithstanding any possible deficiencies in the Record which Mr. Stoddard had available for his review, his procedure should have been to move this Court for an Order Supplementing the Record pursuant to Rule 15(b) of the Rules of the Utah Supreme Court. In fact, if Mr. Stoddard had made inquiry to the Office of Bar counsel or to the Executive Director he would have discovered that those documents were made a part of the record, although not retransmitted to the Clerk of the Utah Supreme Court for safekeeping.

B. Other Documents Are Not Properly Part Of The Record.

Mr. Stoddard also complains that several other documents are not part of the Record. In each case, however, Mr. Stoddard's arguments are not well taken.

First, Mr. Stoddard states that the Record does not contain findings of fact or conclusions of law. In fact, the Record which Mr. Stoddard reviewed contains the Findings of Fact, Conclusions of Law, and Recommendation of Discipline of the Hearing Panel dated January 6, 1988 (R. 30-36), and the Order on Order to Show Cause and Recommendation of Discipline of the Hearing Panel dated January 19, 1989, which Order contains findings of fact and conclusions of law (R. 52-55). The Amended Record also contains the Recommendation of the Review Panel dated April 25, 1989 (R. 65-67) and the Recommendation of the Board of

Bar Commissioners dated May 9, 1989 (R. 68-69), both of which contain amended findings of fact.

Second, Mr. Stoddard states that the Record does not contain a transcript of the hearing held on his Amended Objection to Order on Order to Show Cause, nor the two affidavits offered by Mr. Stoddard at that hearing. The hearing on Mr. Stoddard's Amended Objection was conducted by the Bar Commission in accordance with Rule XII(f) of the Procedures of Discipline of the Utah State Bar, a copy of which is attached in Appendix II. While Rule XII(b) requires that hearings before the Hearing Panel be recorded, no similar requirement appears in Rule XII(f) for hearings on an attorney-respondent's "appeal" to the Bar Commission of the Hearing Panel's findings, conclusions or recommendation. In fact, these hearings by the Bar Commission, which are not evidentiary hearings, are not recorded, and no transcript is therefore available for inclusion into the Record. See Rule XII(f).

At the hearing on his Amended Objection, Mr. Stoddard did proffer that he had attempted restitution to Ms. Knight but that his account had been garnished causing his check to be returned for insufficient funds. The Recommendations of both the Review Panel and the Bar Commission reflect this proffer, and in fact delete the Hearing Panel's recommendation that further restitution be ordered. (R. 65-69).

Mr. Stoddard did submit two affidavits for the Review Panel's review. Although the hearing before the Review Panel is not an evidentiary hearing, the Office of Bar Counsel is willing to stipulate, pursuant to Rule 15(b) of the Rules of the Utah Supreme Court, that these Affidavits be made a part of the Amended Record. They are therefore attached to this Brief as Appendix I. at pp. 19-22.

Third, Mr. Stoddard states that the Record does not contain his Motion to Augment the Record. Pursuant to the Rules of the Utah Supreme Court and the Procedures of Discipline of the Utah State Bar, the Record must contain documents and records generated during the proceedings before the Hearing Panel and the Bar Commission. Mr. Stoddard's Motion to Augment, which he filed on June 27, 1989 as a "Motion to Remand for Augmentation of Record on Appeal", was made to this Court. As such, it is in the Court's file and is not a part of the Record of the Bar's proceedings below.

Fourth, Mr. Stoddard states that his Objection to Recommendation dated May 22, 1989, the "Second Objection", is not in the Record. Mr. Stoddard's Second Objection was an inappropriate attempt to appeal the final recommendation of the Bar Commission. Rules XII(f) and XIV(a) of the Procedures of Discipline, copies of which are attached in Appendix II, provide an attorney-respondent one opportunity to petition the Bar Commission for review of a Hearing Panel's recommendation of discipline. Once granted that

review, the only remaining opportunity for review lies with this Court.

Mr. Stoddard took advantage of his right to a Bar Commission review of the recommendation that he be suspended for (6) months by filing his Amended Objection to Order on Order to Show Cause, which was heard on April 25, 1989. The Review Panel and the Bar Commission did make several changes to the Hearing Panel's Order but approved the recommendation of a six-month suspension. Mr. Stoddard's Second Objection dated May 22, 1989, was, therefore, inappropriate and was not included in the Amended Record. The Office of Bar Counsel is, however, willing to have it made a part of the Record and a copy of it is attached as Appendix I at pp. 23.

Finally, Mr. Stoddard states that the Record does not reflect that he has complied with the Order of Restitution. In fact, the recommendations of both the Review Panel and the Board of Bar Commissioners reflect that Mr. Stoddard made restitution to Ms. Knight and to the Utah State Bar on April 24, 1989. (R. 65-69).

C. This Appeal Cannot Be Based Solely Upon Supposed Deficiencies In The Record.

Even a quick reading of Mr. Stoddard's Appellant's Brief shows that his entire appeal is based upon his allegations that the Record is deficient in certain important documents. Mr. Stoddard has made no pretense of any substantive argument. As this Court has the complete Amended Record, including each document which Mr. Stoddard

identifies as missing, the Court should now dismiss Mr. Stoddard's appeal and forthwith enter an Order suspending him for six months.

II

THE RECOMMENDATION OF THE BAR COMMISSION THAT MR. STODDARD BE SUSPENDED FOR SIX MONTHS IS NOT ARBITRARY OR CAPRICIOUS AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. Standard Of Review.

This Court has consistently upheld findings of fact and conclusions of law in attorney discipline matters absent a showing that such findings or conclusions are arbitrary, capricious, unreasonable or not supported by substantial evidence. In Re Judd, 682 P.2d 302 (Utah 1984); In Re Judd, 629 P.2d 435 (Utah 1981); In Re Blackham, 588 P.2d 698 (Utah 1978); In Re Hansen, 584 P.2d 805 (Utah 1978); In Re Johnston, 524 P.2d 593 (Utah 1974); In Re Badger, 27 Utah 2d 174, 493 P.2d 1273 (Utah 1972); In Re Bridwell, 25 Utah 2d 1, 474 P.2d 116 (Utah 1970); In Re Fullmer, 17 Utah 2d 121, 405 P.2d 343 (Utah 1965); In Re MacFarlane, 10 Utah 2d 217, 350 P.2d 631 (Utah 1960). This Court has also shown considerable deference to the Bar Commission recommendation of discipline and will accept it unless arbitrary or capricious. In Re Johnston, 524 P.2d at 594; In Re Fullmer, 405 P.2d 343.

In the case at issue, the findings of the Hearing Panel are amply supported by the evidence in the Amended Record

and are not arbitrary or capricious. The recommendation that Mr. Stoddard be suspended flows naturally from those findings and should be given considerable deference by this Court.

B. Mr. Stoddard Has the Burden to Show That the Findings are Unsupported.

On appeal of a recommendation of discipline, Mr. Stoddard has the duty to marshall the evidence in support of the findings and then to demonstrate that the evidence, when viewed in the light most favorable to the factual determinations, is insufficient to support the findings. See generally, Harline v. Campbell, 720 P.2d 980 (Utah 1986). Mr. Stoddard has failed completely in meeting his burden. He has not even made a pretense of marshalling the evidence to show that any finding is unsupported.

The Hearing Panel's findings, as approved by the Bar Commission, are that: 1) the Order to Show Cause was issued pursuant to a final Order of Discipline entered by this Court on April 18, 1988 (R. 52); 2) Mr. Stoddard failed to file monthly status reports as required (R. 53); and 3) Mr. Stoddard attempted to make restitution to Ms. Knight, and then did make restitution to her and to the Utah State Bar on April 24, 1989 (R. 53,66,68-69). From these Findings, the Hearing Panel concluded that Mr. Stoddard had violated the terms of his probation, that his probation should be revoked, and that Mr. Stoddard should be ordered to serve the suspension originally recommended. (R. 53-54).

Mr. Stoddard cannot say that these findings and conclusions are unsupported in the Amended Record. Mr. Stoddard admits that he failed to file the monthly status reports required by this Court's Order of Discipline. (Tr. at pp. 6-12). He also admits that he was unsuccessful in paying restitution to Ms. Knight within the time ordered by this Court. (Tr. at pp. 6,9).

C. The Findings and Conclusions Support a Recommendation of Suspension.

It is important to note that the Hearing Panel's first recommendation of discipline, as ultimately approved by this Court, was that Mr. Stoddard be suspended for six months based upon an ongoing history of neglect, but that the suspension be stayed to give Mr. Stoddard the opportunity to show that the neglect would not continue. (R. 30-42). When he failed to file any reports, a fact which Mr. Stoddard admits, the Hearing Panel was justified in revoking the probation.²

D. This Appeal Should Be Dismissed.

Again, even a quick review of Mr. Stoddard's Appellant's Brief indicates that he has made no attempt to marshall the evidence in support of the findings and then to argue that the findings are unsubstantiated. He does not

² During the Order to Show Cause hearing, it also came to light that Mr. Stoddard had had another complaint filed against him with the Office of Bar Counsel, a fact which Mr. Stoddard affirmatively tried to conceal. (Tr. at p. 13). Although not pled in the Order to Show Cause, this also violates Mr. Stoddard's probation and justifies imposing the suspension.

because he cannot; Mr. Stoddard admits that he violated his probation. This Court should dismiss Mr. Stoddard's Appeal and forthwith enter an Order suspending him for six months.

III

MR. STODDARD IS NOT ENTITLED TO ATTACK THE VALIDITY OF THE PREVIOUS ORDER OF DISCIPLINE ENTERED BY THIS COURT ON APRIL 18, 1988, IN THE CONTEXT OF THIS APPEAL.

In his Appellant's Brief Mr. Stoddard states, without making any argument in support of his statement, that the final Order of Discipline dated April 18, 1988 is not supported in the Record. The general rule is that a final order may not be attacked collaterally in a subsequent proceeding; an attack is collateral if not made in the original action or an independent proceeding in equity to have the amount set aside. Olsen v. Board of Education of Granite School District, 571 P.2d 1336 (Utah 1977); Ohio Casualty Insurance Co. v. Brundage, 674 P.2d 101 (Utah 1983).

Mr. Stoddard admits that he received a copy of the April 18, 1988 Order of Discipline (Tr. at p. 13), but argues that the final Order contained new terms of which he was unaware. The proper method of obtaining relief in such circumstance is by direct attack on the Order either through a motion to amend or set aside, or through an independent action in equity. Despain v. Despain, 682 P.2d 849 (Utah 1984); St. Pierre v. Edmonds, 645 P.2d 615 (Utah 1982), and cases therein cited; McBride v. Jones, 615 P.2d 431 (Utah 1980); Olsen v. Board of Education of the Granite School

District, 571 P.2d 1336 (Utah 1977); American State Insurance Co. v. Miller, Adams and Crawford, 557 P.2d 756 (Utah 1976); Rule 60(b), Utah Rules of Civil Procedure.

The time for appeal of this Court's April 18, 1988 Order has long since passed. Mr. Stoddard has not attacked the Order directly or by an independent action in equity. He cannot attack the Order collaterally by means of this appeal.

CONCLUSION

The Amended Record, as supplemented by stipulation, contains all information relevant to this Court's review of the recommendation that Mr. Stoddard be suspended for six months. The recommendation, and the underlying findings and conclusions, are amply supported in the Amended Record. Mr. Stoddard violated the terms of the final Order of Discipline previously entered by this Court, which Order is not subject to review in this proceeding. His probation should be revoked and he should be suspended.

Wherefore, the Office of Bar Counsel respectfully requests that this Court dismiss Mr. Stoddard appeal and enter an Order of Suspension forthwith.

DATED this 1st day of December, 1989.

OFFICE OF BAR COUNSEL

By: Toni Marie Sutliff
Toni Marie Sutliff
Associate Bar Counsel

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Brief was mailed postage pre-paid to John R. Bucher, attorney for Mr. Stoddard at 1343 South 1100 East, Salt Lake City, Utah 84105 on this 1st day of December, 1989.

Toni Marie Eutliff

APPENDIX I

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BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

Review Panel:

Jackson B. Howard, Chair
H. James Clegg
Kent Kasting

In Re:

RAY STODDARD,
Respondent

DOB: 04/14/43
Admitted: 09/27/68

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OBJECTION TO
RECOMMENDATION

COMES NOW, John R. Bucher, Attorney for the above
named Respondent, and hereby objects to that certain Recommendation
dated April 25, 1989, on the following grounds:

1. Paragraph 1)4 does not reflect correctly the Stipulation
that the Respondent submitted a restitutionary check in early
July, 1987, and that had that check been timely deposited, it was
supported by adequate funds and that the Respondent tender offered
a restitutionary check in January, 1989 at a hearing before
the Bar Commissioner.

DATED this 22nd day of May, 1989.

John R. Bucher

JOHN R. BUCHER
Attorney for Appellant
1518 South 1100 East
Salt Lake City, Utah 84105
Telephone: 487-5971

ORIGINAL

FILED

JUN 27 1989

Clerk, Supreme Court, Utah

IN THE SUPREME COURT

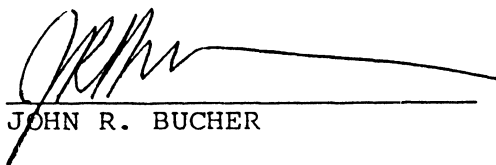
STATE OF UTAH

IN RE: *
RAY S. STODDARD * MOTION TO REMAND FOR AUGMENTATION
OF RECORD ON APPEAL
DOB: 04/14/43
Admitted: 09/27/68 * Supreme Court No. 880130
USB No. F-224
*

COMES NOW, JOHN R. BUCHER, Attorney for the above named Appellant/Respondent, and hereby moves the Court for an Order remanding the Record on Appeal in the above matter to the Utah State Bar for the purposes of augmenting the Record as follows:

1. For the inclusion of Recommendation and Finding regarding Respondent's amended Objection to Order on Order to Show Cause and Motion for Reconsideration and;
2. For the inclusion of Recommendation and Finding and Order regarding the second Objection to the Findings and Recommendation referred to in paragraph one above.

DATED this 27 day of June, 1989.


JOHN R. BUCHER

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy
of the foregoing to: Toni Marie Sutliff, Office of Bar Counsel,
645 South 200 East, Salt Lake City, Utah 84111-3834.



Order
motion granted.
June 28, 1989
Richard B. Howell
Justice



Geoffrey J. Butler
Clerk

Supreme Court State of Utah

332 State Capitol
Salt Lake City, Utah 84114

Gordon R. Hall
Chief Justice
Richard C. Howe
Associate Chief Justice
J. Daniel Stewart
Justice
Christine M. Durham
Justice
Michael B. Zimmerman
Justice

July 17, 1989

Stephen F. Hutchinson, Esq.
Executive Director
Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111-3834

Re: Ray S. Stoddard;

USB No. F-224
Sup. Ct. No. 880130

Dear Steve:

Please find enclosed the amended volume of the record on appeal in the above entitled case, together with the motion and order signed by Associate Chief Justice Howe.

The record was originally filed on May 16, 1989, and then an amended record was filed on June 28, 1989, complete with index and pagination and compliance with paragraph no. 1 of attorney John Bucher's request.

It was not immediately evident to this office that request no. 2 might be forthcoming, or that the record needed to be returned for further processing. However, the record is herewith forwarded to your office pursuant to Rule XIV (a) (1) of the Procedures of Discipline of the Utah State Bar.

Very truly yours,

Geoffrey J. Butler
Geoffrey J. Butler
Clerk

CC: John R. Bucher
Office of Bar Counsel

Toni Marie Sutliff
OFFICE OF BAR COUNSEL
645 South 200 East
Salt Lake City, Utah 84111
(801) 531-9110

IN THE SUPREME COURT OF THE STATE OF UTAH

In Re:)	OBJECTION TO MOTION TO
)	REMAND FOR AUGMENTATION OF
)	RECORD ON APPEAL
Ray S. Stoddard)	
)	Case No. 880130
)	

COMES NOW The Office of Bar Counsel, by and through Toni Marie Sutliff, Associate Bar Counsel, and objects to Respondent's Motion to Remand for Augmentation of Record on Appeal and to the Order entered by Justice Richard Howe pursuant thereto, on the grounds that the Motion is moot and that the relief sought is not contemplated or authorized by the Procedures of Discipline of the Utah State Bar (hereinafter, the "Procedures of Discipline").

STATEMENT OF THE CASE

On or about January 19, 1989, pursuant to an Order to Show Cause, a Hearing Panel of the Disciplinary Hearing Panel Committee of the Utah State Bar entered its Order on Order to Show Cause and recommended that Respondent be suspended from the practice of law in the State of Utah for six (6) months. On or about February 7, 1989, the Board of

Bar Commissioners of the Utah State Bar (hereinafter, the "Bar Commission") adopted the Hearing Panel's Recommendation in its entirety. The Recommendation of the Hearing Panel was served on Respondent on February 7, 1989; the Recommendation of the Bar Commission was served on Respondent on February 8, 1989.

On or about February 22, 1989, Respondent filed an Objection to the Order to Show Cause (sic) and Motion for Recommendation. On or about February 23, 1989, Respondent filed an Amended Objection to Order on Order to Show Cause and Motion for Reconsideration.

On or about April 25, 1989, a Review Panel of the Bar Commission heard Respondent's Objection, amended the Findings of Fact in the Order on Order to Show Cause to reflect that Respondent had satisfied the restitution¹ ordered by this Court in its Order of Discipline approved and entered on April 18, 1988, and again recommended that Respondent be suspended from the practice of law in the State of Utah for six (6) months. On or about May 9, 1989, the Bar Commission approved this recommendation. The recommendations of both the Review Panel and the Bar Commission were served on Respondent on May 15, 1989.

¹Respondent provided a check in an amount sufficient to cover the restitution to the Office of Bar Counsel on or about April 24, 1989.

On or about May 22, 1989, Respondent filed an Objection to Recommendation and attempted to have the Office of Bar Counsel stipulate to an additional amendment to the Findings of Fact in the Order on Order to Show Cause of the Hearing Panel. After the Office of Bar Counsel refused to so stipulate, on or about June 8, 1989, Respondent filed a Notice of Appeal to this Court.

On or about June 27, 1989, Respondent filed his Motion to Remand for Augmentation of Record on Appeal, requesting that the Record include: 1) the Recommendations of the Review Panel and the Bar Commission regarding Respondent's Amended Objection to Order on Order to Show Cause and Motion for Reconsideration; and 2) a recommendation of the Bar Commission regarding his second Objection dated May 22, 1989.² On or about June 28, 1989, Justice Richard Howe granted Respondent's Motion to Remand for Augmentation of Record on Appeal.³

²The Board of Bar Commissioners has not heard Respondent's second Objection, nor is it required to do so pursuant to the Procedures of Discipline, as discussed below.

³The Office of Bar Counsel did not receive a copy of Respondent's Motion to Remand for Augmentation of Record on Appeal until June 28, 1989, and had no notice that the Court would hear the Motion on that day. The Office of Bar Counsel had no notice that Justice Howe had granted the
(Footnote Continued)

On or about June 28, 1989, the Executive Director of the Utah State Bar transmitted the Record on Review of this matter to this Court.

ARGUMENT

- I. RESPONDENT'S FIRST REQUEST, FOR INCLUSION OF THE RECOMMENDATION AND FINDING REGARDING HIS AMENDED OBJECTION TO ORDER ON ORDER TO SHOW CAUSE AND MOTION FOR RECONSIDERATION, WAS PREMATURE WHEN FILED, AND IS NOW MOOT.

Pursuant to Rule XIV(a)(1) of the Rules of Discipline of the Utah State Bar, a copy of which is attached hereto as Exhibit A, the Executive Director of the Utah State Bar has sixty (60) days after the Notice of Appeal to transmit and fill the Record on Review in a disciplinary matter. In the instant case, Respondent filed his Notice of Appeal on June 8, 1989; the Record was transmitted and filed on June 28, 1989, well within the prescribed time. Respondent's Motion to Remand for Augmentation, filed on June 27, 1989, was premature and should not have been granted.

In addition, the Record on Review, as filed on July 28, 1989, does contain both the Recommendation of the Review Panel dated April 25, 1989, at R.65-67, and the Recommendation of the Bar Commission dated May 9, 1989, at

(Footnote Continued)

Motion until it received copies, from both Respondent's counsel and the Clerk of this Court, on July 10, 1989.

R.68-69. Thus, Respondent's Motion has been satisfied as to his first request, is moot and should be denied.

II. RESPONDENT'S SECOND REQUEST, FOR INCLUSION OF A RECOMMENDATION AND FINDING AND ORDER REGARDING HIS SECOND OBJECTION TO THE ORDER ON ORDER TO SHOW CAUSE, DOES NOT SEEK RELIEF AUTHORIZED BY THE PROCEDURES OF DISCIPLINE OF THE UTAH STATE BAR.

Pursuant to Rule XII(f) of the Procedures of Discipline, a copy of which is attached hereto as Exhibit B, a respondent is allowed ten (10) days after service of the recommendation of the Bar Commission to petition the Bar Commission for review of that recommendation. A respondent also has thirty (30) days from service of the Bar Commission's recommendation to appeal to this Court, pursuant to Rule XIV(a) of the Procedures of Discipline, a copy of which is attached hereto as Exhibit A. These two (2) review periods run concurrently, although a timely petition for review to the Bar Commission will toll the Supreme Court review period.

The Procedures of Discipline are explicit in providing for one opportunity to petition the Bar Commission to review a Hearing Panel's recommendation of discipline. Once a respondent has been granted that review, the only remaining opportunity for review lies with this Court. A respondent cannot keep asking the Bar Commission to review a recommendation of discipline until the respondent is completely satisfied with it. Such an exercise would merely

frustrate the discipline system and delay the final entry of discipline by this Court.

Respondent in the instant case took advantage of his right to request that the Bar Commission review the recommendation that he be suspended from the practice of law in the State of Utah for six (6) months.⁴ On April 25, 1989, a Review Panel heard Respondent's objections and made several changes to the Order of the Disciplinary Hearing Panel, but approved the recommendation of a six-months suspension.

Although Respondent is still unhappy with the wording of the now-amended Order on Order to Show Cause, his only recourse is through appeal to this Court.⁵ Thus, Respondent's second request that the Record be augmented by requiring that the Bar Commission hear and rule on his second objection is unwarranted, and should be denied.

CONCLUSION

Respondent's Motion to Remand for Augmentation of Record on Appeal is moot and requests relief which cannot be

⁴Although technically untimely, the Bar Commission heard Respondent's Objections. Respondent has therefore been granted more opportunity to have the Bar Commission review this matter than he deserves.

⁵It is interesting to note that Respondent appears only to be unhappy with the wording of the Findings of Fact, and not with the recommendation of a six-months suspension.

granted by this Court. The Office of Bar Counsel therefore respectfully requests that Respondent's Motion be denied, that Justice Howe's Order dated June 28, 1989, granting Respondent's Motion be vacated, and that a time for filing of Respondent's Brief be set.

Dated this 2nd day of August, 1989.

OFFICE OF BAR COUNSEL

By: Toni Marie Sutliff
Toni Marie Sutliff
Associate Bar Counsel

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Objection was mailed to John R. Bucher, Attorney for Appellant, 1518 South 1100 East, Salt Lake City, Utah 84105 on this 2ND day of August, 1989.

Julie K. White

RULE XIV

REVIEW BY AND APPEALS TO THE SUPREME COURT

(a) Review on Appeal. Within 30 days after service of findings, conclusions and a recommendation of the Board upon the attorney in question and Bar Counsel, the attorney or Bar Counsel (the latter acting at the express direction of the Committee) may seek review by the Supreme Court by filing a written notice of appeal with the Clerk of the Supreme Court. Said notice shall set forth the basis of the appeal, specifying grounds for the appeal. A copy of the notice of appeal shall be served on the other party and upon the Executive Director of the Bar on behalf of the Board.

(1) The Executive Director shall be responsible for preparing the record of the proceedings and forwarding the same to the Supreme Court, which shall be accomplished within 60 days following the notice of appeal. The record shall include the original complaint, Formal Committee Complaint, pleadings, notices, motions and other papers filed in the case. The appellant shall be responsible for paying the costs of a transcript of the Board proceedings to be filed with the Supreme Court at the time that the record is filed. On the filing of the record and the transcript, the Supreme Court shall set a briefing schedule for the appellant and the respondent. Any briefs filed with the Supreme Court shall conform to and be in accordance with Rule 75 Utah Rules of Civil Procedure. Upon the filing of briefs, the Supreme Court shall set a date for oral argument.

EXHIBIT

A

(2) Upon submission of the case, the Supreme Court shall issue a written opinion as in other appellate matters before it, in which the findings, conclusions and recommendation of the Board may be approved, modified or reversed.

(b) Proceedings if no Appeal. If there is no appeal from the findings, conclusions and recommendation of the Board, the Supreme Court shall enter an order approving and adopting the same as its own, unless from a review of the findings and conclusions, it is determined that the recommendation is arbitrary, capricious, or clearly erroneous.

RULE XII

DISCIPLINARY HEARING BEFORE BOARD

(a) Hearing Committee Panel. All Formal Committee Complaints will be submitted to and heard before a committee of two members of the Bar selected by the Board and one public member appointed by the Supreme Court. The Board shall appoint twelve members of the Bar to act on the Hearing Committee Panel, consisting of two attorneys from the first and second divisions, two attorneys from the fourth and fifth divisions, six attorneys from the third division and two at-large attorneys from any divisions. In addition, six public members of the Hearing Committee Panel shall be appointed by the Supreme Court. All regular terms shall be three years, and no member shall serve more than two consecutive three-year terms. Provided, however, for the initial appointments to the Hearing Committee Panel, one member of the Bar from the first and second divisions shall be appointed for one year, and one shall be appointed for three years; one member of the Bar from the fourth and fifth divisions shall be appointed for two years and one for three years; two members of the Bar from the third division shall be appointed for one year, two shall be appointed for two years and two shall be appointed for three years and the public members shall be appointed one for one year, two for two years and two for three years. The President of the Bar shall assign a hearing committee to a particular case and shall name a hearing committee chairman from the Committee in each case.

EXHIBIT

8

(b) Evidence. The rules of evidence and procedure applicable to the conduct of nonjury civil trials in the district courts of the state of Utah shall govern the hearing on a formal Committee Complaint. A verbatim recording shall be maintained by electronic and/or stenographic means.

(c) Burden and Standard of Proof. The burden of proof shall be on Bar Counsel to sustain the Formal Committee Complaint, or various counts thereof, by clear and convincing evidence.

(d) Personal Attendance by the Attorney. Unless excused from attendance by the chairman of the Hearing Committee for good cause shown, the attorney whose conduct is the subject of the hearing shall attend the hearing in person and shall answer any questions put to him by Bar Counsel and the Hearing Committee.

(e) Findings, Conclusions and Recommendation. After the hearing is completed, the Hearing Committee shall make written findings of fact, conclusions of law and its recommendation as to the discipline of the attorney and shall submit the same to the Board. The Board shall review and consider the findings, conclusions and recommendation of the Hearing Committee, and it may affirm, modify or disaffirm the Hearing Committee determinations in whole or in part. The findings, conclusions and recommendation shall then be entered by the Board either dismissing the complaint or recommending disbarment, suspension, probation, public reprimand, restitution and/or costs. A copy of the findings,

conclusions and recommendation shall be served upon Bar Counsel and the attorney in question or his counsel.

(f) Petitions for Amendment, Modification or Reconsideration. With 10 days of service of the Board's findings, conclusions and recommendation, Bar Counsel or the attorney in question may petition the Board to amend, modify or reconsider the findings, conclusions or recommendation. The petition shall be filed with the Executive Director of the Bar. The petition shall specify any proposed amendment or modification and any reasons advanced for reconsideration. The petition may be supported by legal argument and may be accompanied by a request for oral argument. The Board shall permit oral argument on the petition if requested.

(g) Transmittal to Supreme Court. Upon all proceedings before the Board having been concluded, in the event that discipline is recommended, a certified copy of the Board recommendation setting forth the recommended discipline, accompanied by the findings of fact and conclusions of law, shall be forthwith forwarded to the Clerk of the Supreme Court, and copies thereof shall be served upon the attorney in question and Bar Counsel.

(h) Public Access to Proceedings. Upon the filing of a Formal Committee Complaint, the pleadings in the matter shall be open to the view of all interested persons. Evidentiary hearings conducted by the Hearing Committee shall be open to the public. The findings of fact, conclusions of law and

Recommendation of the Hearing Committee and Board shall be open to all interested persons.

(i) Ex Parte Communications Prohibited. Neither Bar Counsel nor members of the disciplinary staff shall engage in ex parte communications with members of the Board or members of the Hearing Committee concerning any disciplinary case that is being or may be considered by the Board of the Hearing Committee.

UPREME COURT OF UTAH

332 STATE CAPITOL

SALT LAKE CITY, UTAH 84114

August 14, 1989

OFFICE OF THE CLERK

Christine A. Burdick
Bar Counsel
Utah State Bar Office
645 South 200 East
Salt Lake City, Utah 84111-3834

In Re: Ray S. Stoddard No. 880130
Bar No. F-224, Disciplinary Proceeding

Order of this Court dated June 28, 1989 is recalled in so far as
it directed remand to the Bar Commission.

Geoffrey J. Butler, Clerk

JOHN R. BUCHER #0474
Attorney for Respondent
1518 South 1100 East
Salt Lake City, Utah 84105
Telephone: (801) 487-5971

BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

Hearing Panel:
Richard P. Makoff, Chairman
Robert J. Stansfield
Stanford P. Darger

IN RE:

RAY S. STODDARD

DOB: 04/14/43
Admitted 09/27/68

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AFFIDAVIT OF H. DELBERT WELKER
IN SUPPORT OF MEMORANDUM

F-224

COMES NOW, H. Delbert Welker, being duly sworn upon his oath,
and hereby deposes and says as follows:

1) He is an attorney authorized to practice law in the State
of Utah.

2) He has known Ray S. Stoddard for approximately eleven (11)
years, and that he has worked closely with him, and to office with
him.

3) That during the eleven years affiant has known Ray Stoddard,
he has known him on several occasions to ask for a very low fee, or
no fee at all from his clients. Affiant has referred several clients
to Mr. Stoddard, who otherwise be unable to afford

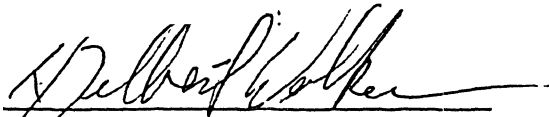
4) Affiant has throughout the above period of time, known Mr. Stoddard to be unable to provide for his own living needs.

5) Throughout the period of time that affiant has known Mr. Stoddard, he has never known him to have office help, and the pressures from this and also a heavy case load, he has seen Mr. Stoddard occasionally drink to excess.

6) Affiant has never known Mr. Stoddard to live at a residence of his own, and has lived, and is currently living out of his office.

7) Affiant feels that his present clientele who might otherwise be unable to afford legal services, would be in jeopardy, and that there would be a significant effect on future clients who might need affordable legal services.

DATED this 15th day of April, 1989.


H. Delbert Welker

Subscribed and sworn to before me this 15th day of April, 1989.

Notary Public

Residing at

Commission Expires

JOHN R. BUCHER #0474
Attorney for Respondent
1518 South 1100 East
Salt Lake City, Utah 84105
Telephone: (801) 487-5971

BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

Hearing Panel:
Richard P. Makoff, Chairman
Robert J. Stansfield
Stanford P. Darger

IN RE:

RAY S. STODDARD

DOB: 04/14/43
Admitted 09/27/68

*

*

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*

AFFIDAVIT OF GRANT W. MORRISON
IN SUPPORT OF MEMORANDUM

F-224

COMES NOW, Grant W. Morrison, being duly sworn upon his oath,
hereby deposes and says as follows:

1) He is an attorney authorized to practice law in the
State of Utah.

2) He has known Ray S. Stoddard for approximately eight (8)
years, and that he has had an opportunity to work closely with him
and to office with him.

3) That throughout the above period of time the affiant has
observed that Ray Stoddard has consistently either not asked his
clients for money, or has asked for such a low fee that he has been
put in the situation of not being able to provide for his basic
living needs. That on many, many occasions the affiant has sent

Ray Stoddard clients that were unable to afford legal services of any kind, except from Ray Stoddard, and that Ray Stoddard's practice is devoted to a high percentage to pro bono publico representations.

4) That throughout the above period of time, affiant has never known Ray Stoddard to have a secretary or to be able to afford a secretary, and most of the time he has known him he has lived in his office, and is currently living in his office, and has been for at least one year. On several occasions the affiant has observed that Mr. Stoddard would become so agitated over his case load that he became ineffecient, and there were simply not enough hours for him to act as his own secretary and to attend to his courtroom duties.

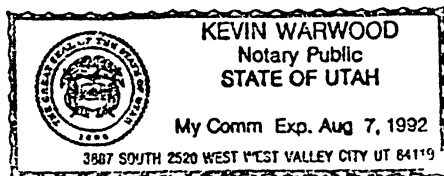
5) That affiant is willing to undertake the monitoring and reporting of the case load of Mr. Stoddard on a daily basis if necessary.

6) The impact on Mr. Stoddard's clients would be severe in that many of his ongoing clients could not afford other legal services.

DATED this 24th day of April, 1989.

Grant W. Morrison
Grant W. Morrison

Subsribed and sworn to me this 24th day of April, 1989



Kevin W. Warwood
Notary Public
Residing at S. L. COUNTY

JOHN R. BUCHER
Attorney for Respondent
1518 South 1100 East
Salt Lake City, Utah 84105
Telephone: 487-5971

BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

Review Panel:

Jackson B. Howard, Chair
H. James Clegg
Kent Kasting

In Re:

RAY STODDARD,
Respondent

DOB: 04/14/43
Admitted: 09/27/68

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OBJECTION TO
RECOMMENDATION

COMES NOW, John R. Bucher, Attorney for the above
named Respondent, and hereby objects to that certain Recommendation
dated April 25, 1989, on the following grounds:

1. Paragraph 1)4 does not reflect correctly the Stipulation
that the Respondent submitted a restitutionary check in early
July, 1987, and that had that check been timely deposited, it was
supported by adequate funds and that the Respondent tender offered
a restitutionary check in January, 1989 at a hearing before
the Bar Commissioner.

DATED this 22nd day of May, 1989.

John R. Bucher

APPENDIX II

RULE XII

DISCIPLINARY HEARING BEFORE BOARD

(a) Hearing Committee Panel. All Formal Committee Complaints will be submitted to and heard before a committee of two members of the Bar selected by the Board and one public member appointed by the Supreme Court. The Board shall appoint twelve members of the Bar to act on the Hearing Committee Panel, consisting of two attorneys from the first and second divisions, two attorneys from the fourth and fifth divisions, six attorneys from the third division and two at-large attorneys from any divisions. In addition, six public members of the Hearing Committee Panel shall be appointed by the Supreme Court. All regular terms shall be three years, and no member shall serve more than two consecutive three-year terms. Provided, however, for the initial appointments to the Hearing Committee Panel, one member of the Bar from the first and second divisions shall be appointed for one year, and one shall be appointed for three years; one member of the Bar from the fourth and fifth divisions shall be appointed for two years and one for three years; two members of the Bar from the third division shall be appointed for one year, two shall be appointed for two years and two shall be appointed for three years and the public members shall be appointed one for one year, two for two years and two for three years. The President of the Bar shall assign a hearing committee to a particular case and

(b) Evidence. The rules of evidence and procedure applicable to the conduct of nonjury civil trials in the district courts of the state of Utah shall govern the hearing on a Formal Committee Complaint. A verbatim recording shall be maintained by electronic and/or stenographic means.

(c) Burden and Standard of Proof. The burden of proof shall be on Bar Counsel to sustain the Formal Committee Complaint, or various counts thereof, by clear and convincing evidence.

(d) Personal Attendance by the Attorney. Unless excused from attendance by the chairman of the Hearing Committee for good cause shown, the attorney whose conduct is the subject of the hearing shall attend the hearing in person and shall answer any questions put to him by Bar Counsel and the Hearing Committee.

(e) Findings, Conclusions and Recommendation. After the hearing is completed, the Hearing Committee shall make written findings of fact, conclusions of law and its recommendation as to the discipline of the attorney and shall submit the same to the Board. The Board shall review and consider the findings, conclusions and recommendation of the Hearing Committee, and it may affirm, modify or disaffirm the Hearing Committee determinations in whole or in part. The findings, conclusions and recommendation shall then be entered by the Board either dismissing the complaint or recommending disbarment, suspension, probation, public

conclusions and recommendation shall be served upon Bar Counsel and the attorney in question or his counsel.

(f) Petitions for Amendment, Modification or Reconsideration. Within 10 days of service of the Board's findings, conclusions and recommendation, Bar Counsel or the attorney in question may petition the Board to amend, modify or reconsider the findings, conclusions or recommendation. The petition shall be filed with the Executive Director of the Bar. The petition shall specify any proposed amendment or modification and any reasons advanced for reconsideration. The petition may be supported by legal argument and may be accompanied by a request for oral argument. The Board shall permit oral argument on the petition if requested.

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RULE XIV

REVIEW BY AND APPEALS TO THE SUPREME COURT

(a) Review on Appeal. Within 30 days after service of findings, conclusions and a recommendation of the Board upon the attorney in question and Bar Counsel, the attorney or Bar Counsel (the latter acting at the express direction of the Committee) may seek review by the Supreme Court by filing a written notice of appeal with the Clerk of the Supreme Court. Said notice shall set forth the basis of the appeal, specifying grounds for the appeal. A copy of the notice of appeal shall be served on the other party and upon the Executive Director of the Bar on behalf of the Board.

(1) The Executive Director shall be responsible for preparing the record of the proceedings and forwarding the same to the Supreme Court, which shall be accomplished within 60 days following the notice of appeal. The record shall include the original complaint, Formal Committee Complaint, pleadings, notices, motions and other papers filed in the case. The appellant shall be responsible for paying the costs of a transcript of the Board proceedings to be filed with the Supreme Court at the time that the record is filed. On the filing of the record and the transcript, the Supreme Court shall set a briefing schedule for the appellant and the respondent. Any briefs filed with the Supreme Court shall conform to and be in accordance with Rule 75 Utah Rules of Civil Procedure. Upon the filing of briefs, the

(2) Upon submission of the case, the Supreme Court shall issue a written opinion as in other appellate matters before it, in which the findings, conclusions and recommendation of the Board may be approved, modified or reversed.

(b) Proceedings if no Appeal. If there is no appeal from the findings, conclusions and recommendation of the Board, the Supreme Court shall enter an order approving and adopting the same as its own, unless from a review of the findings and conclusions, it is determined that the recommendation is arbitrary, capricious, or clearly erroneous.